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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :  
JAMES ARTHUR SMITH, ET AL. : EXAMINER: JUSKA, C. A.  
SERIAL NO: 09/926,109 :  
FILED: SEPTEMBER 4, 2001 : GROUP ART UNIT: 1771  
FOR: PRODUCTION OF A TEXTILE :  
FLOORCOVERING HAVING MORE  
THAN ONE LAYER, USING AN  
AQUEOUS POLYMER DISPERSION AS  
ADHESIVE

REPLY BRIEF

COMMISSIONER FOR PATENTS  
ALEXANDRIA, VIRGINIA 22313

SIR:

The following is a Reply Brief in reply to the Examiner's Answer dated May 25, 2005  
(Answer).

Appellants continue to maintain the arguments made in the Appeal Brief. Thus, it  
may not be assumed that points made in the Answer in response to arguments made in the  
Appeal Brief that are not replied to herein, are conceded.

For the benefit of the Board, it is noted that the ground of rejection listed as "I." at  
pages 9-10 of the Answer is actually part of Ground (C) for Claims 22-26, and Grounds (E)  
and (G) for Claims 27-29. The arguments below track the grounds of rejection headings used  
in the Appeal Brief.

Ground (A)

Appellants maintain the arguments in the Appeal Brief.

Ground (B)

Appellants maintain the arguments in the Appeal Brief.

Ground (C)

Appellants maintain the arguments in the Appeal Brief.

Claim 22

In reply to the Examiner's finding that, in effect, this claim is not separately patentable (Answer at 15-16), note that both JP '037 and JP '972 disclose that if vinyl chloride is not present in an amount of 30-95% for their copolymer (A), "for example, if the vinyl chloride is less than 30 wt%, the flame retardation effect to the laying articles of the composition is insufficient." See page 7, lines 8-11 of the English translation of JP '037; and page 6, lines 17-20 of the English translation of JP '972. Polymer A of Claim 22 cannot possibly contain a minimum of 30 wt% of vinyl chloride. Thus, it would not have been obvious to modify the component amounts of JP '037 or JP '972 to form a mixture having the composition of this claim.

Claim 23

See the above with regard to Claim 22, hereby incorporated by reference. In addition, Claim 23 allows for no more than 25% by weight of units other than those recited for polymer A.

Claim 25

The Examiner finds that Appellants have failed to address the Examiner's arguments regarding motivation to manipulate ranges (Answer at 16).

In reply, as JP '037 discloses 95-40 parts by weight of their ethylene-containing polymer, and 60-5 parts by weight of their synthetic rubber polymer, i.e., at least 40% based on the combination of the two polymers, there is no motivation to use the ethylene-containing polymer in amount less than 40% by weight. Indeed, JP '037 discloses that if their ethylene-containing polymer is present in an amount less than 40 parts by weight, flame retardation effect is insufficient (see the English translation at page 7, lines 13-14).

Analogous disclosure appears in JP '972 with regard to a minimum of 10 parts by weight for their ethylene-containing polymer. JP '972 discloses that if their ethylene-containing polymer is present in an amount "less than 10 parts by weight, the flame retardation effect is similarly insufficient" (see the English translation at the sentence bridging pages 6 and 7).

Claim 26

See the discussion above with regard to Claim 25, hereby incorporated by reference. Claim 26 is even further away from JP '037 and JP '972, since Claim 26 limits the maximum amount of polymer A to 5%.

Ground (D)

Appellants maintain the arguments in the Appeal Brief.

Ground (E)

Appellants maintain the arguments in the Appeal Brief.

Claim 27

See the above discussion with regard to Claim 22, hereby incorporated by reference.

Claim 28

See the above discussion with regard to Claim 23, hereby incorporated by reference.

Claim 29

See the above discussion with regard to Claim 26, hereby incorporated by reference.

Ground (F)

Appellants maintain the arguments in the Appeal Brief.

While a disclosure of 10% as a lower part of a range, **without more**, may or may not suggest 9.99%, such a disclosure, combined with specific disclosure that using an amount less than 10% is, in effect, problematical, is a clear teaching away from using **any** percentage less than 10%. The Examiner's citation of M.P.E.P. § 2144.05, II, and the cases cited therein (Answer at 18), are inapposite.

Ground (G)

Appellants maintain the arguments in the Appeal Brief.

Claim 29

The Examiner finds that Appellants have failed to specifically address the Examiner's arguments with regard to motivation to manipulate ranges (Answer at 19).

In reply, Perlinski discloses that his ethylene-carboxylic acid copolymer is generally used in an amount of 10-100%, preferably 50-70% by weight (dry) of the flocking adhesive composition (column 2, lines 55-57). Thus, if anything, Perlinski provides motivation to use this copolymer in an amount greater than 10% by weight, and actually teaches away from using the copolymer in an amount less than 10% by weight. Indeed, Claim 29 requires a 5% maximum, which is 50% of the 10% minimum of Perlinski. Clearly there could be no motivation to use half the minimum percentage specified by Perlinski.

#### Ground (H)

In response to Appellants' citation of the *Sebek* case in the Appeal Brief, the Examiner notes that *Sebek* is limited to its particular facts (Answer at 20). In reply, while this may be true, the facts herein are analogous to those in *Sebek*, as Perlinski directs persons skilled in the art to use their ethylene-carboxylic acid copolymer in an amount of 50-70% by weight of the flocking adhesive composition, as disclosed at column 2, lines 55-57.

#### Comparative Data

Regarding the Examiner's findings regarding the comparative data of record in paragraph I. (Answer at 20), Appellants maintain that such data is still relevant as showing improvement of properties not recognized by the applied prior art.

#### CONCLUSION

The Examiner's summary, under paragraph J. (Answer at 21) has been adequately rebutted by this Reply Brief and the Appeal Brief.

Appellants continue to maintain that all the rejections of record are untenable, and  
should be REVERSED.

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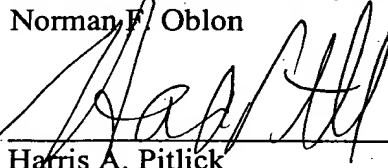
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